

## Danner, Ward

---

**From:** Feldt, Lisa  
**Sent:** Wednesday, August 20, 2014 2:47 PM  
**To:** Jones, Jim; Stanislaus, Mathy; Wise, Louise  
**Cc:** Reynolds, Thomas; Vaught, Laura  
**Subject:** FW: Fw:

Lisa Feldt  
Acting Deputy Administrator  
Office of the Administrator  
202-564-4711  
feldt.lisa@epa.gov

---

**From:** Enck, Judith  
**Sent:** Wednesday, August 20, 2014 3:28 PM  
**To:** Feldt, Lisa  
**Subject:** Fw:

---

**From:** Soltani, Beth  
**Sent:** Wednesday, August 20, 2014 2:49:59 PM  
**To:** Enck, Judith  
**Subject:**

## 14. TOXICS: PEER plans to sue EPA, Calif. school district over PCB testing

Sam Pearson, E&E reporter

Published: Wednesday, August 20, 2014

A national environmental group and a group of parents and teachers in an exclusive California coastal community plan to sue U.S. EPA and a local school district in the latest escalation of a dispute over the presence of harmful chemicals in classrooms there.

A group of Malibu, Calif., parents and teachers, who are being represented by the advocacy group Public Employees for Environmental Responsibility, intend to sue the Santa Monica-Malibu Unified School District and EPA in an attempt to win a more aggressive cleanup plan for the removal of polychlorinated biphenyls, or PCBs, in three school sites.

The group yesterday sent a [notice of intent to sue](#) to the agencies. The move means litigation could begin within 60 days. The local group, Malibu Unites, has used the enclave's celebrity parents to garner increased publicity for the school system's struggle with PCBs, which are some of the most common environmental contaminants in school structures and large apartment buildings in the United States constructed between 1940 and 1977. The group also has floated theories that the PCB contamination at Malibu Middle and High schools, as well as Juan Cabrillo Elementary School, is the result of unverifiable past military activity at the school sites ([E&ENews PM](#), Feb. 25).

"I'm very frustrated and I'm very disappointed at the way this has been handled," model Cindy Crawford said yesterday in an interview on NBC's "Today" show, adding she had removed her children from the schools over concerns for their safety.

Crawford said she thought Congress needed to change federal law to require PCB testing in older schools.

Testing of caulk performed by a environmental health firm hired by the Malibu parents' group last year found four of 10 classrooms tested at the middle school showed PCB levels above the EPA-recommended level of 50 parts per million.

These kind of buildings "are very likely to contain PCBs in their materials," wrote Valerie Watnick, a professor of law at the City University of New York, in a 2010 law review [article](#) on the issue published in the legal journal *Environ*, a publication of the University of California, Davis, School of Law.

In a statement, EPA's Region 9 said the school district was controlling PCB levels through the most common exposure pathways.

"The primary health concerns from PCBs in building materials, including window caulk, stem from the inhalation of contaminated air; and secondarily from contact with PCBs in dust and subsequent incidental ingestion," EPA spokeswoman Nahal Mogharabi said. "For this reason, EPA's national guidance to schools is to implement best management practices to eliminate these potentially harmful human exposures to PCBs. These practices include frequent cleaning procedures and improved ventilation, as needed for that specific location."

Mogharabi said the agency had not yet reviewed the notice to sue.

When researchers have tested buildings from that era for PCBs, their presence has often been confirmed. In a 2004 [study](#) by the Harvard School of Public Health, researchers found 13 of 24 buildings tested in the Boston area had caulking materials with detectable PCB levels.

Watnick wrote that while EPA technically could fine the owners of buildings with PCB levels higher than 50 parts per million in building materials, that didn't happen in New York because EPA Region 2 believed it "would not be administratively feasible nor would it encourage compliance given the vast number of buildings throughout Region 2 that contain PCBs at such a high level."

PEER said in its notice to sue that those practices "have no statutory or regulatory authority and cannot override the statutory and regulatory direction that all materials containing PCBs in excess of 50 ppm 'present an unreasonable risk of injury to health' and must be removed."

Some schools have detected PCB contamination either after testing for the first time or after remodeling projects that disturbed dormant PCBs. The PCBs in Malibu were discovered in caulking and in soil at two schools after a 2011 construction project ([Greenwire](#), Nov. 26, 2013).

Other lawsuits have been brought by school districts seeking to hold PCB manufacturers responsible for cleanup costs. The town of Lexington, Mass., [sued](#) two PCB manufacturers in 2012 at the U.S. District Court for Massachusetts seeking to force the companies to pay for the costs of a PCB cleanup in its schools. The case is pending and scheduled to go to trial in 2016. The town has sought class-action status to cover public schools statewide.

Another school district, Yorktown Central School District in Yorktown Heights, N.Y., settled a suit with the companies in 2010, arguing two leading PCB manufacturers knew in the 1940s and 1950s that the chemicals they were making were not safe.

"We invite both the district and EPA to sit down with us to resolve these disturbing issues or we will see them in court," PEER senior attorney Paula Dinerstein said in a statement.